

# HOUSE . . . . . No. 825

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By Mr. Linsky of Natick, petition of David Paul Linsky and others relative to the crime of identity fraud. The Judiciary.

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## The Commonwealth of Massachusetts

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### PETITION OF:

David Paul Linsky	Matthew C. Patrick
Bruce E. Tarr	Patricia D. Jehlen
Susan C. Fargo	James R. Miceli
Karen E. Spilka	Thomas J. O'Brien
Kathi-Anne Reinstein	Deborah D. Blumer
John W. Scibak	

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In the Year Two Thousand and Five.

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AN ACT RELATIVE TO THE CRIME OF IDENTITY FRAUD.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 37E of Chapter 266 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended in  
3 subsection (a) within the definition of "Personal identifying infor-  
4 mation" by: (i) striking the word "individual" and inserting in  
5 place thereof, the word "person" and (ii) inserting after the words  
6 "password identification", as appearing at the end of the subpara-  
7 graph, the following words: "or tax identification number, or other  
8 bank or financial institution issued financial account number or  
9 distinctive password identification code".

1 SECTION 2. Section 37E of Chapter 266 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended in  
3 subsection (a), by inserting after the definition of  
4 "Personal identifying information" the following definition:  
5 "Person" includes an individual whether living or deceased, asso-  
6 ciation, organization, corporation or other business entity."

1 SECTION 3. Section 37E of Chapter 266 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended as  
3 follows by inserting after subsection (c), the following subsec-  
4 tions:—

5 (d) Whoever attempts to solicit, obtain or obtains from another  
6 person the personal identifying information of such person, by  
7 false pretense or by willfully making a materially false, fictitious  
8 or deceptive statement or communication, whether by oral,  
9 written, electronic mail, internet site or any other means, with the  
10 intent to:

11 (i) pose as such person in order to defraud any person, by  
12 fraudulently obtaining money, credit, goods, services or anything  
13 of value, or

14 (ii) use the personal identifying information of such person to  
15 obtain, forge, or cause to be made, any unlawful, fraudulent or  
16 false: bank or financial institution issued credit card, charge card,  
17 bank card or financial instrument or any government or quasi-gov-  
18 ernment issued identification card, license, passport, birth certifi-  
19 cate or permit document.

20 shall be guilty of the crime of identity fraud and shall be pun-  
21 ished as follows:

22 (1) for a violation involving subsection (d)(i): if the offense is a  
23 first offense and the value of the item obtained or attempted to be  
24 obtained is no more than two hundred and fifty dollars, by a fine  
25 of not more than \$1,000, or by imprisonment in the house of cor-  
26 rection for not more than 2½ years, or by both such fine and  
27 imprisonment; or if the offense is a second or subsequent offense  
28 or the value of the item obtained or attempted to be obtained is  
29 more than two hundred and fifty dollars, by a fine of not more  
30 than \$5,000, or by imprisonment in the state prison for not more  
31 than 5 years, or in the house of correction for not more than 2½  
32 years, or by both such fine and imprisonment; and

33 (2) for a violation involving subsection (d)(ii) by a fine of not  
34 more than \$5,000, or by imprisonment in the state prison for not  
35 more than 5 years, or in the house of correction for not more than  
36 2½ years, or by both such fine and imprisonment.

37 A person who knowingly aids or abets another person to  
38 commit or attempt to commit the offense of identity fraud prohib-  
39 ited by this subsection shall be guilty of, and shall be subject to  
40 the punishment for, identity fraud provided under this subsection.

41 (e) A prosecution under this section may be commence and dis-  
42 posed of, in either the Superior Court or District Court. A prose-  
43 cution in the Superior Court may be commenced in the county in  
44 which the conduct in violation of this section occurred in the com-  
45 monwealth, or in the county where the victim or defendant  
46 resides, or has a principal place of business within the common-  
47 wealth. A prosecution commenced in the District Court may be  
48 commenced in the judicial district in which the conduct in viola-  
49 tion of this section occurred within the commonwealth, or in the  
50 judicial district where the victim or defendant resides or has a  
51 principal place of business within the commonwealth.

1 SECTION 4. Section 37E of Chapter 266 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended by  
3 striking the current subsection heading “(d)” and inserting a new  
4 subsection heading “(f)”.

1 SECTION 5. Section 37E of Chapter 266 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended by  
3 striking the current subsection heading “(e)” and inserting a new  
4 subsection heading “(g)”.

1 SECTION 6. Section 37E of Chapter 266 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended by  
3 inserting after current subsection (e), which heading is to be  
4 amended to subsection “(g)” by Section 5, the following subsec-  
5 tion:—

6 (h) A law enforcement officer when acting within the scope of  
7 the officer’s lawful authority shall not be subject to the prohibi-  
8 tions of subsections (b), (c) or (d).